

043679/01270/MPM/TPB/PAO

**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF ILLINOIS

MICHAEL JOHNSON,

Plaintiff,

v.

AMAZON.COM LLC, a Delaware  
Corporation; DUKE REALTY LIMITED  
PARTNERSHIP, an Indiana Partnership; and  
STEEL KING INDUSTRIES, INC., a  
Wisconsin Corporation,

Defendants,

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STEEL KING INDUSTRIES, INC.,

Defendant/Third Party Plaintiff,

v.

LAKESIDE RACK INSTALLERS, INC.,

Third Party Defendant.

Case Number 17-cv-7335

Judge Ruben Castillo

**STEEL KING INDUSTRIES, INC.'S MOTION *IN LIMINE* # 30 TO BAR EVIDENCE  
OF PRIOR INCIDENTS AND COMPARISON TO THE SUBEJCT OCCURRENCE**

Defendant, STEEL KING INDUSTRIES, INC., by and through its attorneys, Thomas P. Boylan and Michael P. Moothart of CASSIDAY SCHADE LLP, respectfully moves this Honorable Court *in limine* for an order to exclude any evidence or testimony regarding prior incidents at the subject premises, and comparison of prior incidents to the subject occurrence. Accordingly, Defendant states the following in support of its motion:

1. Prior to the occurrence at issue in this case, there was a prior incident in the subject warehouse where a forklift operator struck a column while operating the forklift.

2. The occurrence at issue arises out of a forklift driver operating the forklift under a section of unsecured rack, which caused a scissor lift to fall. (*See* deposition of Michael Johnson at 75:2-79:2, attached in Duke Realty's Motion *in Limine* to bar mention of prior incidents; deposition of Adam Medlin at 120:23-121:5 attached in Duke Realty's Motion *in Limine* to bar mention of prior incidents; deposition of Jeffrey Russell, p. 140:23-141:4 attached in Duke Realty's Motion *in Limine* to bar mention of prior incidents). The prior incidents are unrelated to the occurrence at issue.

3. Pursuant to Federal Rule of Evidence 401, "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401.

4. Pursuant to Federal Rule of Evidence 403, "[a] court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. Fed. R. Evid. 403.

5. In the instant matter, evidence of the prior incidents is not a fact of consequence, as it has no nexus to the occurrence at issue. Similarly, such evidence does not make a fact of consequence more or less likely. Any marginal probative value this evidence may offer would be substantially outweighed by the danger of unfair prejudice, and would confuse the issue and mislead the jury as the prior incidents are not at issue in this case.

WHEREFORE, Defendant, STEEL KING INDUSTRIES, INC., moves this Honorable Court *in limine* to exclude testimony by any party regarding prior incidents.

**GRANTED** \_\_\_\_\_ **DENIED** \_\_\_\_\_ **WITHDRAWN** \_\_\_\_\_ **RESERVED** \_\_\_\_\_

CASSIDAY SCHADE LLP,  
/s/ Michael P. Moothart  
Attorney for Defendant, STEEL KING INDUSTRIES, INC.

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**CERTIFICATE OF SERVICE**

I do hereby certify that on April 15, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

**/s/ Michael P. Moothart**

Michael P. Moothart

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